

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HAN S. UHM

Appeal No. 2000-1090
Application No. 09/086,990

ON BRIEF

Before KIMLIN, LIEBERMAN, and PAWLIKOWSKI, Administrative Patent Judges.

LIEBERMAN, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Pursuant to the provisions of 37 CFR § 1.197(b) (1997), appellant has submitted a timely Request for Rehearing (hereafter "Request") of our Decision dated September 9, 2002, affirming the following rejection under 35 U.S.C. § 102(e) of claims 1 and 3 through 8 as being clearly anticipated by Breault and claims 2, 9 and 10 as obvious over Breault. The Request is limited to the affirmance of the rejection on the grounds of anticipation.

Appellant's request rehearing as the Breault reference in the portions referred to in our Decision do not teach that certain sulfur compounds "in flue or off gas" fall within the scope of "contaminants that are being removed from a gaseous emission by exposure to a plasma confined to and generated within a reactor chamber as significantly required by all claims under appeal," (Request, pages 1 and 2.)

Initially, we find that the claimed subject matter is directed to a method of "eliminating contaminants from a gaseous emission." We found in our decision that, "[t]he gases to be treated include sulfur dioxide, carbon dioxide, nitrogen dioxide, nitrogen and oxygen." See Decision, page 5. There is no requirement in the claimed subject matter that all the contaminants are eliminated. Indeed, there is no requirement that sulfur contaminants per se be eliminated by the method of the claimed subject matter. Indeed, it would have been sufficient to meet the requirements of the claimed subject matter that the nitrogen contaminants alone would have been eliminated from a gaseous emission.

Notwithstanding our position *supra*, the entire thrust of Breault is directed to a "method comprising a sulfur tolerant, high water vapor (about 3% to about 18%) tolerant, packing-free coronal-catalyst." See for example, column 2, lines 33-36 and 59-64. We conclude that the coronal catalyst provides for the presence of sulfur. Our position is further supported by the optional presence of, "a N/S scrubber where the effluent or discharge from the coronal catalyst is introduced to the N/S scrubber." See column 2, lines 59-64. See also column 4, lines 12-14 and 43-48, wherein Breault

discloses , “the step of N/S scrubbing the No_x bearing gas stream that was exposed to the packing-free coronal catalyst.” It is evident from our findings that the sulfur containing compounds are exposed to the plasma to the same extent as the other gaseous components present in the gaseous emission.

The appellant further requests rehearing as, “[t]he furnace (16) as referred to in column 15, line 9-20 of the Breault patent indicated: ‘--in the test apparatus-- in practice a furnace may be omitted--.’ ” (Request, page 2). As to the utilization of a furnace discussed in a description of the apparatus at column 14, line 59 to column 15, line 20, we do not find that the statement, “[t]he furnace 16 is 3 feet in length in the test apparatus but in practice a furnace may be omitted or it may be up to 10 ft or longer,” column 15, lines 9-11, to negate anticipation. The presence of an alternate embodiment does not in and of itself negate anticipation. Our determination of anticipation is based on the unique merits of each case. In the instant case, we are cognizant that the teachings of Breault disclose in detail and illustrate in Figure 2, a furnace 16 which meets the requirements of the claimed subject matter. The presence of another embodiment does not negate anticipation, particularly where there is a lengthy and complete description of a principal embodiment which describes the presence of a furnace. We accordingly conclude and maintain our decision that the teachings of Breault alone are sufficient to anticipate claims 1 and 3 through 8 of the claimed subject matter.

As to the balance of appellant's arguments, each of them has previously been addressed in our Decision and we do not find in the Request any argument convincing us of error in the conclusions we reached in our Decision.

Accordingly, appellant's Request for Rehearing is denied.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

DENIED

EDWARD C. KIMLIN
Administrative Patent Judge

PAUL LIEBERMAN
Administrative Patent Judge

BEVERLY A. PAWLIKOWSKI
Administrative Patent Judge

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